

IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE
February 17, 2016 Session

IN RE: IZZABELLA B.

**Direct Appeal from the Juvenile Court for Wilson County
No. 13-PAT-35 John Thomas Gwin, Judge**

No. M2015-00963-COA-R3-JV – Filed April 22, 2016

This is an appeal from an order designating a primary residential parent, setting visitation and child support, and changing the child’s last name to that of Father. The juvenile court found that naming Father as primary residential parent was in the child’s best interest and determined that the child’s last name should be changed. Mother appealed both the designation of primary residential parent and the changing of the child’s last name. We affirm.

**Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Juvenile Court Affirmed
and Remanded**

BRANDON O. GIBSON, J., delivered the opinion of the court, in which FRANK G. CLEMENT, JR., P.J., M.S., and ANDY D. BENNETT, J., joined.

William Harris Farmer, Nashville, Tennessee, and Patricia J. Cottrell, Nashville, Tennessee, for the appellant, Tia B.

John Lyons Meadows, Lebanon, Tennessee, for the appellee, Robert A.

OPINION

FACTS AND PROCEDURAL HISTORY

The parties, Robert A. (“Father”) and Tia B. (“Mother”) are the parents of the child Izzabella B. (“the Child”)¹, who was born on April 23, 2013, out of wedlock. Mother and Father had a stormy two to three year on and off romantic relationship that

¹In cases involving a minor child, it is this Court’s policy to redact names in order to protect the child’s identity. In this case, in order to preserve both clarity and the anonymity of the child, we will redact the names of individuals sharing the child’s surname and will refer to those individuals by their given name and the first letter of their surname.

first ended in June or July of 2013. During their relationship, the parties lived together, primarily at Mother's home in Hickman, Tennessee. While the Child is Mother's first child, Father has three children from a previous marriage. Both Father and Mother had prior marriages.

On June 26, 2013, Father filed a petition in juvenile court asking the court to find him to be the lawful father of the Child, to enter a parenting plan and set child support, to change the Child's last name to Father's, and to award him joint decision-making authority and significant co-equal parenting time. The motion was heard on August 29, 2013, and a temporary order was entered on September 23, 2013, naming Mother as the temporary residential parent, establishing a temporary parenting plan and child support, directing the entry of an order of paternity, restraining the parties from communicating except in writing, and directing that neither parent was to consume alcohol while Child was with him or her or for 24 hours before. Despite a court order prohibiting the two from communicating except in writing, the parties reconciled sometime after the hearing on August 29th, and Father moved back into Mother's home until Thanksgiving of 2013, when an incident resulting in Father's arrest caused the couple to split up again. The parties reconciled once again in January of 2014 and broke off their relationship for the final time in June of 2014. The juvenile court heard testimony from a number of witnesses in this matter on October 8, 2014, December 22, 2014, and March 18, 2015.

Both parents testified that the Child is their first priority and that they have ample time to spend with and take care of the Child. Father owns his own residential construction business, which allows him to mostly set his own schedule. Mother, who has a barber's diploma, has been a stay-at-home mother since the Child was born and lives off a trust established by her father. Father's residence changed several times throughout the litigation. At one point he lived with his mother in a mobile home, and at the time of the hearing, Father lived in what he referred to as a "basement apartment" in a home owned by a friend of Father's. Mother's residence also changed, as she moved from the home she shared with Father during their relationship in Hickman County to Pulaski, Tennessee, largely in order to move farther away from Father.

Unsurprisingly, much of the testimony and proof in this case presented by Father and Mother are diametrically opposed. Both Father and Mother testified regarding instances of violence or threatened violence. According to Father, his relationship with Mother began to deteriorate shortly after the Child was born. Father described one situation where, according to him, after he and Mother had an argument, Mother grabbed a knife in the kitchen and acted as though she was going to cut her wrist. Father testified that he de-escalated the situation and "[i]t went away." On another occasion, according to Father, Mother tried to punch him while he was driving a car because they were arguing over Mother's relationship with another man. Father testified that the Child was

in the back seat of the car during this confrontation. Mother described the same event in her testimony and claimed that Father attacked her in the car. She testified that she did not know how the fight was resolved, but it was, and they went to the store afterward and then went home. Mother also described what she referred to as “the Thanksgiving incident,” where, according to Mother, Father attacked her in the bedroom of her home. Mother eventually got free and reported the incident to the police, which resulted in Father’s arrest. Mother ultimately did not pursue her criminal warrant against Father. Responding to these allegations, Father testified that he had never hit or harmed Mother but that she had hit him with a computer, bed posts, and her fists. However, Father did admit to flinging a hamburger in Mother’s face once while she was hitting and kicking him. Despite these allegations, the parties reconciled several times, including during the litigation, despite court orders prohibiting them from communicating except in writing.

In his testimony, Father expressed concern that he believes Mother is addicted to alcohol and that she mixes diet pills with alcohol. He stated that when he lived with Mother “on a day-to-day basis...there would be heavy drinking.” Father submitted photographs showing cases of alcohol in the back of Mother’s truck as well as cans of beer in Mother’s refrigerator. According to Father, he attempted to discuss what he believed was a drinking problem with Mother several times, but she dismissed those concerns. Father noted that he believed “a social drink is okay” but that “[w]hen it’s lock yourself in the bedroom with two bottles of wine two or three days a week, that’s an issue.” Mother denied having an addiction to alcohol but admitted to violating the court’s order regarding her use of alcohol because she “didn’t know we were still under all this stuff, I had no idea.” She testified that she drinks alcohol on Saturdays and that she has a prescription for diet pills, which she sometimes mixes with alcohol. In addition, Mother or Mother’s mother reported Father to DCS on numerous occasions, alleging that he used or sold drugs. Father denied those allegations and testified that he submitted to and passed a drug test in response to the one the DCS referrals.

Both parties also testified regarding Mother’s romantic relationships and friendships with other men. The record is full of testimony of Mother’s sexual encounters and Father’s objection to the same. Father expressed specific concern about some of the men staying the night with Mother and stated that he did not want them around the Child, specifically because at least one of the men had a history of violence with Mother. However, Father did admit that he has not resided with Mother since June of 2014 and does not know what goes on in Mother’s home on a daily basis. With respect to his own romantic relationships, Father testified that he had not been involved with anyone romantically since June of 2014. Mother admitted that one of the men, her ex-husband whom she believes uses drugs, had been around the Child, but she could not give an exact number of times and guessed it had not even been a total of five hours. Mother also discussed previous instances in which she had taken out orders of protection

or filed criminal warrants against several of her former romantic partners. She testified that she was assaulted by one boyfriend in 2008, resulting in Mother filing an affidavit of complaint, although she was again involved with the same man in 2013. Additionally, Mother took out an order of protection and filed an assault warrant against her ex-husband, both of which were ultimately dismissed. She admitted to firing a gun during another incident with her ex-husband. Mother then testified that she did not remember taking out an order of protection, affidavit of complaint, or any other civil or criminal legal proceedings against any other men. However, she later admitted that she had also taken out an order of protection against a third man who, she stated, was “choking me, if I remember correctly.” Mother testified that none of the four orders of protection or criminal warrants she had taken out, including the one against Father, resulted in a conviction or a granting of an order of protection. Mother stated that she ended up “dropping” at least one of them and, according to the trial court, Mother “either failed to prosecute, or failed to appear, or voluntarily dismissed [those] petitions.”

Specifically with respect to the Child, Father testified that he believes the Child needs both of her parents and that he does not want Mother completely out of the Child’s life. He believed the Child should be with Mother “for a few days during the week” and that if Mother “would get some help with her drinking, he would be comfortable with both parents having more equal time. Father testified that if he was given primary care of the Child, she would go to daycare as needed and that he had already selected a daycare where his three other children previously attended. However, he also stated that he would be “willing to do whatever the Court sees, deems fit, or to help [the Child’s] momma where she may decide would be a good place to go.” Father also requested that the court change the Child’s last name to Father’s last name, largely due to what Father described as a poor reputation associated with Mother’s last name. With respect to the reputation associated with Mother’s last name, Father testified that Mother had a reputation for being a “wild child, a party girl” and that Mother’s last name is associated with her father’s ownership of strip clubs. On the other hand, Father testified that he did not have any relatives sharing his last name in the counties in which the parties reside.

Father’s ex-wife, Hilary S. (“Hilary”), testified at length with respect to Father’s parenting abilities as well as their past romantic relationship and current parental relationship. Hilary was also previously married to Mother’s ex-husband. According to Hilary, although she and Father are under a court-ordered parenting plan, they do not actually follow it but share time with their three children as desired. She testified that she and Father split the financial costs for their three children and that child support had not been necessary. Further, she also testified that she has no concerns with Father’s parenting of their children and that she does not believe he uses drugs. On the other hand, Hilary stated that Mother has threatened “to catch [her] house on fire while [she] and [her] children were in it.” According to Hilary, there was another instance where

Mother was driving Father and Hilary's children to school but needed to stop at Hilary's house to pick up a pair of contact lenses, and Mother stated that "it was all she could do not to kill [Hilary]..." in front of the children.

During her testimony, Hilary was also questioned about statements she made during her and Father's divorce hearings. She admitted that she had taken out two orders of protection against Father in the past but claimed that they were her fault. She also admitted to making various accusations against Father in the past but testified that "some of them are true. I can't recall on the one question that you asked me, though. If – I mean, if I said it, I said it." Despite their past history, Mother stated that Father "did go to counseling" and that their issues were "three years ago. And he is a great father now."

The juvenile court also heard testimony from a number of witnesses who were familiar with one or both parties. Bea Farmer, director of a child care center, testified that she kept each of Father's three other children from time to time over the course of ten years. Ms. Farmer also testified that Father is a good, responsible parent and that Father's children were very well behaved. Various friends of each party testified regarding the fitness of each parent. Mother's friends generally testified that she was a good mother, that she did not abuse alcohol, and that they believed Father was jealous and violent. Similarly, Father's friends testified that he was a good father and that they had concerns about Mother's partying and behavior.

The trial court issued an order in this matter on April 22, 2015, naming Father the primary residential parent and awarding 245 days to Father and 120 days to Mother. The trial court also ordered that the Child's last name be changed to Father's surname and set the amount of child support. The trial court found that Mother's

demeanor and credibility at trial was poor. In multiple instances, her response to relevant questions was evasive. On two or three different occasions, Mother said: "I'm not going to answer that." The Court even took the unusual step of calling a recess for the specific purpose of allowing Mother's counsel an opportunity to consult with Mother regarding this issue.

While the court found that "both parents have a strong relationship with [the Child], the court also noted that "Mother has a documented history of unstable relationships with several men." The court took issue with the fact that Mother had taken out "petitions for orders of protection, or criminal warrants, or both against her paramours" and then "either failed to prosecute, or failed to appear, or voluntarily dismissed [those] petitions." The juvenile court also found that in more than one of those relationships, Mother allowed the man to stay overnight in her home, with the Child present, after seeking an

order of protection or criminal warrants. The court found that “the preponderance of the evidence is that Mother manufactured these incidents in her own mind.” The juvenile court also noted that Mother “testified glowingly about Father during a custody proceeding between Father and his former wife. However, under cross-examination in this proceeding about that same testimony, she again resorted to ‘I’m not going to answer that.’”

While the court noted that both parties admitted to fighting, both physically and verbally, the court “perceive[d] Father to be more remorseful than Mother” for the incidents. The court also found that Father’s “potential for future performance of parenting responsibilities is superior to that of Mother,” based at least in part on “Father’s willingness and ability to facilitate and encourage a close and continuing parent-child relationship” between the Child and Mother. Additionally, the court noted that Mother stated that she would “never” move back closer to Father. The court’s findings also included concerns about Mother’s “moral, physical, mental and emotional fitness.” The court specifically took issue with Mother allowing a person “with drug and alcohol issues” to be around the Child. Finally, the court noted that “[w]hile Father is not perfect in his own life, this statutory comparison clearly favors Father.”

ISSUES

Mother presents the following issues, as slightly reworded, for review on appeal:

- I. Whether the trial court erred in adopting a permanent parenting plan giving Mother only 120 days of residential parenting time.
- II. Whether the trial court failed to use the appropriate legal standard in deciding to change Child’s surname to that of Father.
- III. Whether Mother’s proposed parenting plan should be adopted.

STANDARD OF REVIEW

The Tennessee Supreme Court recently described in detail the standard of review that applies when an appellate court reviews a trial court’s decision on a parenting arrangement:

In a non-jury case such as this one, appellate courts review the trial court’s factual findings de novo upon the record, accompanied by a presumption of the correctness of the findings, unless the preponderance of the evidence is otherwise. See Tenn. R. App. P. 13(d); *Armbrister v. Armbrister*, 414

S.W.3d 685, 692 (Tenn. 2013). We review the trial court’s resolution of questions of law de novo, with no presumption of correctness. *Armbrister v. Armbrister*, 414 S.W.3d at 692.

Because decisions regarding parenting arrangements are factually driven and require careful consideration of numerous factors, trial judges, who have the opportunity to observe the witnesses and make credibility determinations, are better positioned to evaluate the facts than appellate judges. *Armbrister v. Armbrister*, 414 S.W.3d at 693. Determining the details of parenting plans is “peculiarly within the broad discretion of the trial judge.” *Armbrister v. Armbrister*, 414 S.W.3d at 693 (quoting *Edwards v. Edwards*, 501 S.W.2d 283, 291 (Tenn. Ct. App. 1973)). “It is not the function of appellate courts to tweak a [residential parenting schedule] in the hopes of achieving a more reasonable result than the trial court.” *Armbrister v. Armbrister*, 414 S.W.3d at 693 (quoting *Eldridge v. Eldridge*, 42 S.W.3d 82, 88 (Tenn. 2001)).

A trial court’s decision regarding the details of a residential parenting schedule should not be reversed absent an abuse of discretion. *Armbrister v. Armbrister*, 414 S.W.3d at 693 (citing *Eldridge v. Eldridge*, 42 S.W.3d at 88). A trial court abuses its discretion when it applies an incorrect legal standard, reaches an illogical conclusion, bases its decision on a clearly erroneous assessment of the evidence, or employs reasoning that causes an injustice to the complaining party. *State v. Banks*, 271 S.W.3d 90, 116 (Tenn. 2008) (citing *Konvalinka v. Chattanooga–Hamilton Cnty. Hosp. Auth.*, 249 S.W.3d 346, 358 (Tenn. 2008)). A trial court abuses its discretion in establishing a residential parenting schedule “only when the trial court’s ruling falls outside the spectrum of rulings that might reasonably result from an application of the correct legal standards to the evidence found in the record.” *Armbrister v. Armbrister*, 414 S.W.3d at 693 (quoting *Eldridge v. Eldridge*, 42 S.W.3d at 88).

Kelly v. Kelly, 445 S.W.3d 685, 691-92 (Tenn. 2014). With these principles in mind, we turn to the substance of this appeal.

ANALYSIS

A. Primary Residential Parent

First, Mother challenges the juvenile court’s decision to designate Father as the primary residential parent. Trial courts have broad discretion in fashioning child custody

and visitation arrangements that best suit the unique circumstances of each case. *Parker v. Parker*, 986 S.W.2d 557, 563 (Tenn. 1999). This is because such decisions often hinge on subtle factors, such as the parents' demeanor and credibility during proceedings. *Rountree v. Rountree*, 369 S.W.3d 122, 129 (Tenn. Ct. App. 2012). However, that discretion is limited to some degree by the statutory directive that such determinations "shall be made on the basis of the best interest of the child." Tenn. Code. Ann. § 36-6-106(a). Additionally, Section 36-6-106 directs courts to consider "all relevant factors," including a non-exclusive list of fifteen factors, when determining the best interests of a child in a primary residential parent determination. Determining a child's best interest is a "fact-sensitive inquiry" that does not call for "rote examination of each of [the relevant] factors and then a determination of whether the sum of the factors tips in favor of or against the parent. The relevancy and weight to be given each factor depends on the unique facts of each case." *Solima v. Solima*, No. M2014-01452-COA-R3-CV, 2015 WL 4594134, at *4 (Tenn. Ct. App. July 30, 2015) (*no perm. app. filed*) (quoting *In re Marr*, 194 S.W.3d 490, 499 (Tenn. Ct. App. 2005)).

In its ten-page order, the juvenile court made findings for each of the relevant statutory factors² and determined that naming Father primary residential parent was in the

²The statutory factors are:

(a)(1) The strength, nature, and stability of the child's relationship with each parent, including whether one (1) parent has performed the majority of parenting responsibilities relating to the daily needs of the child;

(2) Each parent's or caregiver's past and potential for future performance of parenting responsibilities, including the willingness and ability of each of the parents and caregivers to facilitate and encourage a close and continuing parent-child relationship between the child and both of the child's parents, consistent with the best interest of the child. In determining the willingness of each of the parents and caregivers to facilitate and encourage a close and continuing parent-child relationship between the child and both of the child's parents, the court shall consider the likelihood of each parent and caregiver to honor and facilitate court ordered parenting arrangements and rights, and the court shall further consider any history of either parent or any caregiver denying parenting time to either parent in violation of a court order;

(3) Refusal to attend a court ordered parent education seminar may be considered by the court as a lack of good faith effort in these proceedings;

(4) The disposition of each parent to provide the child with food,

Child's best interests. Mother argues that the juvenile court's findings are not supported

clothing, medical care, education and other necessary care;

(5) The degree to which a parent has been the primary caregiver, defined as the parent who has taken the greater responsibility for performing parental responsibilities;

(6) The love, affection, and emotional ties existing between each parent and the child;

(7) The emotional needs and developmental level of the child;

(8) The moral, physical, mental and emotional fitness of each parent as it relates to their ability to parent the child. The court may order an examination of a party under Rule 35 of the Tennessee Rules of Civil Procedure and, if necessary for the conduct of the proceedings, order the disclosure of confidential mental health information of a party under § 33-3-105(3). The court order required by § 33-3-105(3) must contain a qualified protective order that limits the dissemination of confidential protected mental health information to the purpose of the litigation pending before the court and provides for the return or destruction of the confidential protected mental health information at the conclusion of the proceedings;

(9) The child's interaction and interrelationships with siblings, other relatives and step-relatives, and mentors, as well as the child's involvement with the child's physical surroundings, school, or other significant activities;

(10) The importance of continuity in the child's life and the length of time the child has lived in a stable, satisfactory environment;

(11) Evidence of physical or emotional abuse to the child, to the other parent or to any other person. The court shall, where appropriate, refer any issues of abuse to juvenile court for further proceedings.

(12) The character and behavior of any other person who resides in or frequents the home of a parent and such person's interactions with the child;

(13) The reasonable preference of the child if twelve (12) years of age or older. The court may hear the preference of a younger child upon request. The preference of older children should normally be given greater weight than those of younger children;

(14) Each parent's employment schedule, and the court may make accommodations consistent with those schedules; and

(15) Any other factors deemed relevant by the court.

by the evidence and that its findings of Mother's credibility have no foundation. Additionally, Mother argues that the trial court impermissibly punished Mother for her testimonial style, her having sought orders of protection and dismissing them, and her romantic relationships without any proof that any of those factors had any harmful effect on the Child. Finally, Mother argues that the trial court's findings of fact regarding Mother's drinking are contrary to the preponderance of the evidence.

The testimony regarding Mother's and Father's moral, emotional and mental fitness was entirely conflicting, which is not surprising in a case such as this. The trial court alone has the ability to observe the manner and demeanor of a witness while testifying, thus we give "considerable deference" to the trial court's findings of credibility and the weight to be given testimony. *Kelly*, 445 S.W.3d at 692. Further,

"[A]ppellate courts will not re-evaluate a trial judge's assessment of witness credibility absent clear and convincing evidence to the contrary." *Wells v. Tennessee Bd. of Regents*, 9 S.W.3d 779, 783 (Tenn. 1999); *see also Hughes v. Metro Gov't of Nashville & Davidson Cnty.*, 340 S.W.3d 352, 260 (Tenn. 2011). In order for evidence to be clear and convincing, it must eliminate any 'serious or substantial doubt about the correctness of the conclusions drawn from the evidence.' *State v. Sexton*, 368 S.W.3d 371, 404 (Tenn. 2012) (quoting *Grindstaff v. State*, 297 S.W.3d 208, 221 (Tenn. 2009)). Whether the evidence is clear and convincing is a question of law that appellate courts review de novo without a presumption of correctness. *Reid ex el. Martiniano v. State*, 396 S.W.3d 478, 515 (Tenn. 2013), (citing *In re Bernard T.*, 319 S.W.3d 586, 596-97 (Tenn. 2010)), cert. denied, 134 S. Ct. 224 (2013).

Id.

Mother argues that the juvenile court's basis for finding that her demeanor and credibility were poor is contrary to the testimony in the record. Mother specifically argues that the trial record, examined in context, demonstrates that Mother's refusals to answer certain questions do not indicate a lack of credibility, but rather an unwillingness to answer questions she believed she had already answered. However, the court's issue with Mother's refusals to answer is only one piece of its credibility finding. The juvenile court also found that "[i]n multiple instances, [Mother's] response to relevant questions was evasive." Indeed, the court even took a recess in order to provide Mother's counsel an opportunity to instruct Mother "how to answer questions instead of answering the question that you want [opposing counsel] to ask" Simply stated, our review of the record does not demonstrate "clear and convincing" evidence that the juvenile court's credibility determination with respect to Mother is incorrect.

With respect to the juvenile court's finding regarding Mother's use of alcohol and diet pills, we cannot say that the court's finding is contrary to the preponderance of the evidence. According to the order, the juvenile court made its finding based on the "testimony, exhibits, and demeanor of the witnesses." As previously noted, we afford the juvenile court "considerable deference" with respect to its findings regarding the demeanor and credibility of the witnesses. Further, our review of the record, including the trial exhibits showing cases of alcohol in Mother's truck and refrigerator, indicates that the juvenile court's finding is not contrary to the preponderance of the evidence.

Mother's final point of contention with respect to the juvenile court's parenting plan is that the trial court impermissibly punished her due to her testimonial style, romantic relationships, and her having sought and dismissed orders of protection against several men. In support of her argument, Mother notes that the juvenile court, in an apparent attempt to get the parties' counsel to pursue more relevant lines of questioning, stated that

So really y'all need to be talking to me about [the Child] and what's best for [the Child]. It appears to me that when each of these parents is with [the Child], that [the Child] is not having problems. It's when [the Child] is with the two of them together

. . . . I have never heard anything that convinces me yet that [the Child] has these periods of vulnerability when both those two aren't together.

From this, Mother concludes that Mother's testimony must have changed the court's mind with respect to the best interests of the Child. Our review of the record does not indicate that the juvenile court punished, or attempted to punish, Mother in any way. Rather, the record demonstrates that the trial court heard several days' worth of conflicting testimony and made its decision based on its determination of the many witnesses' credibility and the prescribed statutory factors. In fact, with respect to Mother's alleged partying, the court stated that "I don't care if she goes out and plays and parties and dances. [The Child isn't] there. She's a young woman. As long as [the Child isn't] there, I don't care what she does." Similarly, there is nothing in the record to indicate that the juvenile court sought to punish Mother for having romantic relationships or for taking out orders of protection against multiple men, including Father. Rather, the trial court considered Mother's relationships for their implications on her credibility and the prescribed statutory factors. Simply, the evidence in this case does not preponderate against the juvenile court's findings and conclusions with respect to designating Father the primary residential parent.

B. The Child's Change in Surname

Next, Mother argues that the juvenile court's decision to change the Child's surname to that of Father must be reversed because the juvenile court failed to use the appropriate legal standard. We disagree.

The standard for changing a nonmarital child's surname was set forth in *Barabas v. Rogers*:

The courts should not change a child's surname unless the change promotes the child's best interests. Among the criteria for determining whether changing a child's surname will be in the child's best interests are: (1) the child's preference, (2) the changes potential effect on the child's relationship with each parent (3) the length of time the child has had its present surname, (4) the degree of community respect associated with the present and proposed surname, and (5) the difficulty, harassment, or embarrassment that the child may experience from bearing either its present or its proposed surname.

Barabas v. Rogers, 868 S.W.2d 283, 287 (Tenn. Ct. App. 1993) (internal citations omitted). The *Barabas* court further established that the parent seeking to change the child's surname has the burden of proving that the change will further the child's best interests. *Id.*

In its order, the juvenile court changed the Child's surname to that of Father based, in part, upon a need for future continuity for the Minor Child, the fact that Father will be her primary residential parent when she enters public school, the fact that Mother's history of multiple paramours makes it more likely than not that Mother's surname will change in the future, and the parties' respective reputations in the community.

Father testified that Mother had a reputation for being a "wild child, a party girl," and that Mother's last name is associated with her father's ownership of strip clubs. Father stated that he did not have any relatives sharing his last name in the counties in which the parties reside. As discussed previously, the court made numerous findings regarding Mother's lack of credibility and expressed concerns about Mother's "moral, physical, mental, and emotional fitness," which are relevant to *Barabas*' "degree of community respect associated with the present and proposed surname" factor. Given the trial court's extensive findings with respect to Mother's credibility, fitness, and reputation, we conclude that the facts in the record do not preponderate against the trial

court's finding that the best interests of the Child are served by changing the Child's last name to that of father. Accordingly, we affirm the order of the trial court.

C. Father's Attorney Fees on Appeal

Finally, although not raised as an issue on appeal, Father requests that this Court award him his attorney's fees on appeal. Father cites no applicable case law in support of his request. Because it was not raised as an issue, we decline to award attorney's fees in this case. *See* Tenn. R. App. P. 13(b); *Watson v. Watson*, 309 S.W.3d 483, 497 (Tenn. Ct. App. 2009).

CONCLUSION

For the foregoing reasons, the judgment of the juvenile court is affirmed. Costs of this appeal are taxed to the appellant, Tia B., and her surety, for which execution may issue if necessary.

BRANDON O. GIBSON, JUDGE